

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suede G. Kelly.

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER04-106-001

ORDER ACCEPTING COMPLIANCE FILING
AND DIRECTING FURTHER COMPLIANCE FILING

(Issued March 25, 2004)

1. In this order, the Commission accepts the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) compliance filing and directs it to make a further compliance filing concerning the Midwest ISO's proposed revisions to Attachment P (List of Grandfathered Agreements) under its Open Access Transmission Tariff (OATT). This order benefits customers by maintaining an accurate and up-to-date listing of grandfathered agreements in the Midwest ISO's tariff.

I. Background

2. On October 30, 2003, the Midwest ISO submitted proposed revisions to Attachment P to the Midwest ISO's OATT. The proposed revisions were intended to update the listing of grandfathered agreements for certain of its Transmission Owners (TO). On December 29, 2003, the Commission issued an order conditionally accepting the Midwest ISO's proposed revisions to Attachment P (December 29 Order).¹ Various interveners to the proceeding noted inaccuracies to the filing, which the Midwest ISO, in its answer, agreed to correct. The December 29 Order directed the Midwest ISO to do the following: (1) update its Attachment P to include omissions and corrections to Attachment P, consistent with its answer; (2) file tariff sheets, including the agreements cited by Great River, et al.,² to the extent it

¹ Midwest Independent System Operator, Inc., 105 FERC ¶ 61,387 (2003) (December 29 Order).

² Great River, et al. includes Dairyland Power Cooperative and Southern Minnesota Municipal Power Agency.

determines that they meet the definition of grandfathered agreements; and (3) provide an explanation for any omissions to the extent they do not meet the definition of grandfathered agreements.

II. The Filing

3. On January 28, 2004, the Midwest ISO submitted proposed revisions to Attachment P of its OATT to comply with the Commission's December 29 Order. The Midwest ISO explains how it has complied with all of the Commission's directives set forth in the December 29 Order. However, the Midwest ISO states that it did not list two Interconnection and Interchange Agreements (I&I Agreements)³ in its Attachment P. Based on certain discussions with its TO member, Xcel Energy Corporation,⁴ the Midwest ISO explains that while these I&I Agreements are still in effect and govern certain aspects of the relationship between the Excel Operating Companies of Northern States Company and/or Northern States Power Company – Wisconsin (jointly, the "NSP") and Dairyland Power Cooperative (Dairyland) and Southern Minnesota Municipal Power Agency (SMMPA), the Network Integration Transmission Service (NITS) Agreements with Dairyland and SMMPA, which are already listed on Attachment P, already provide for the "grandfathering" of the network service agreements between the parties under the prior Xcel Energy Corporation OATT.

4. Therefore, the Midwest ISO states that it is not necessary to list the contested I&I Agreements NSP has with Dairyland and SMMPA in Attachment P, as they do not provide for transmission service over NSP's system. The Midwest ISO maintains that it is not the Midwest ISO's practice to include interconnection agreements in Attachment P if they do not contain a transmission service component.

III. Notices of Filings and Protest

5. Notice of the Midwest ISO's proposed revisions was published in the Federal Register, (69 Fed. Reg. 6280 (2004)), with comments, protests, and interventions due on or before February 18, 2004. No interventions were filed. Dairyland and SMMPA filed a joint protest.⁵

³ The Midwest ISO did not list grandfathered agreements between Dairyland and Northern States Power Company and Northern States Power Company – Wisconsin, dated July 1, 1996, and between SMMPA and Northern States Power Company, dated January 19, 1996.

⁴ NSP is a subsidiary of Xcel Energy Corporation.

⁵ Dairyland and SMMPA were granted intervention status in our December 29 Order. See 105 FERC ¶ 61,387 at P 7 (2003).

6. The protestors contend that certain I&I Agreements were erroneously not included in the List of Grandfathered Agreements.⁶ They state that the Midwest ISO did not include these agreements because the Midwest ISO believes that these agreements do not provide for the provision of transmission service over the NSP system. The Midwest ISO believes that the NITS agreements provide for that service and have been included in Attachment P. Although the protestors agree with the Midwest ISO that certain aspects of their relationship with NSP are governed by the protestors' NITS agreements, other transmission service features provided by the protestors and NSP are governed by the NSP I&I Agreements.

7. In support of their argument, the protestors provide a list of specific aspects of transmission service which are included in the contested agreements. These include inadvertent interchange, reactive power, power factor requirements, losses, dispatch, scheduling, systems coordination (congestion), frequency control, and metering. The protestors argue that all of these services include a component of transmission service, and thus the agreements which pertain to these services should be included in Attachment P as grandfathered agreements.

8. The protestors allege that the Midwest ISO shows a lack of consistency and clarity with regard to grandfathered treatment of interconnection agreements. The protestors further allege that they have found several agreements covering interconnection or interchange services which are currently grandfathered under Attachment P, including agreements to which NSP is a party.

9. The protestors request that the Commission confirm that if the contested I&I Agreements are not included in Attachment P as grandfathered agreements, they will remain in effect and not be impacted by such lack of inclusion. The protestors request further confirmation that the underlying agreements themselves govern the parties' rights and obligations, rather than Attachment P of the Midwest ISO OATT.

10. The Midwest ISO filed an answer to the protest, reiterating that it is not necessary to list the contested I&I Agreements in Attachment P, as they do not provide for transmission service over the NSP system. The Midwest ISO also states that the Commission previously held that the determination of which agreements are to be included in Attachment P is to be made at the discretion of the Midwest ISO, with the advice and consultation of the TO members.⁷ The Midwest ISO argues that the December 29 Order specifically directed the Midwest ISO to file the contested agreements to the extent that the Midwest ISO determined that those agreements met

⁶ The agreements in contention are those listed in footnote 3.

⁷ Citing our December 29 Order at PP 23-24.

the definition of grandfathered agreements, provided that the Midwest ISO included an explanation for any omission. The Midwest ISO contends that it complied with those instructions here.

IV. Discussion

A. Procedural Matters

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, (18C.F.R. § 385(a)(2)(2003), prohibits an answer to a protest and an answer to an answer, unless otherwise allowed by decisional authority. However, we will accept the Midwest ISO's answer because it provides information that assists our understanding of the issues raised in this proceeding.

B. Analysis

12. Upon review, the Commission finds that the agreements listed in the Midwest ISO's revisions to Attachment P comply with the December 29 Order and should be accepted to become effective October 31, 2003, subject to the conditions set forth below.

13. We agree with the protestors' concerns that there may be a lack of consistency and clarity with regard to the Midwest ISO's grandfathered treatment of certain agreements. While the Commission granted the Midwest ISO some discretion, in consultation with members, in determining which agreements meet the definition of grandfathered agreements, such discretion was not unlimited. Nor can it result in the arbitrary inclusion of some agreements and not others.

14. We directed the Midwest ISO to list the agreements in Attachment P to the extent the Midwest ISO determines they meet the definition of grandfathered agreements. Section 1.19 (Definitions) of the Midwest ISO's OATT states that a grandfathered agreement is:

“An agreement or agreements executed or committed to prior to [September 16, 1998] that are not subject to the specific terms and conditions of the Tariff consistent with the Commission's policies. These agreements are set forth on the list which is Attachment P to the Tariff.”

15. Section 1.19 is unclear as to whether Attachment P should include agreements with the September 16, 1998 cut off date as the sole criteria for determining which agreements should be included in Attachment P, or whether Attachment P is intended to be a subset within this overall cut off date, such as only agreements meeting the

OATT definition of a grandfathered agreement and having a transmission service component, or other criteria. Accordingly, we will direct the Midwest ISO to clarify this point in the compliance filing ordered herein.

16. At present, it does not appear that the Midwest ISO uses specific, objective criteria for determining which grandfathered agreements should be included in Attachment P. For example, the protestors list an agreement for inadvertent interchange service that was excluded from Attachment P, whereas the Commission notes that the Midwest ISO included an agreement between NSP and Otter Tail Power Company that was for inadvertent interchange service. It is unclear why this agreement was included, while the protestors' agreement(s) for inadvertent interchange service was not. If there is a difference between these agreements that would justify why one is included but the other is not, that difference has not been explained and clarified in Attachment P. Similarly, the protestors list agreements involving losses and systems coordination (congestion) which were not included in Attachment P, whereas the Commission notes that other agreements which appear on their face to be of a similar nature were included.⁸ Again, the Midwest ISO has provided no explanation as to why some agreements involving these matters were included but the protestors' agreement(s) were not.

17. Accordingly, we will direct the Midwest ISO to develop more comprehensive, objective criteria for determining specifically which agreements will be included in Attachment P in the compliance filing ordered herein. We will also direct the Midwest ISO to file revisions to Attachment P to add, or remove, agreements which satisfy the comprehensive, objective criteria required herein. For each agreement removed or added to Attachment P, the Midwest ISO is directed to explain how that agreement meets the comprehensive, objective criteria required herein, or why it does not.

18. Finally, the protestors request confirmation that if the contested agreements are not ultimately included in Attachment P, they will remain in effect and will not be impacted by such lack of inclusion. In its answer, the Midwest ISO agrees with the protestors that the contested agreements should remain in effect regardless of whether or not they are included in Attachment P. Since the underlying agreements themselves govern the parties' rights and obligations rather than Attachment P, protestors request for confirmation is hereby granted.

⁸ See e.g., Interconnection and Interchange Agreement between NSP and Northwestern Wisconsin Electric Company, dated April 25, 1989.

The Commission orders:

(A) The Midwest ISO's compliance filing is hereby accepted, effective October 31, 2003, subject to the modifications ordered below.

(B) The Midwest ISO is hereby directed to submit a revised Attachment P and other applicable tariff revisions, within 30 days of the date of this order, as discussed herein.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.